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In the Supreme Court

of the United States

October Term, 1966

No. 787

KENNETH H. GRANT, MALCOLM C. BEARDMORE, GUY H. HEATER, SAM BUXTON, G. E. McCURDY, LLOYD CHANDLER, HELEN L. BEARDMORE, WILLIAM McCARVER, ROSE M. McCARVER, GWEN GHRIST, OPAL GHRIST, GUY GHRIST, LEOTIS C. SAUNDERS, DONNA E. SAUNDERS, MAUDE E. EVANS, ORIN H. SASS, W. DALE ELLIS, VERDA BUXTON, ELIZABETH McCURDY, WALTER S. SAUNDERS, Sr., DONALD SADLOWSKY, CLAUS P. SASS, ALICE SASS, ALVERDA SASS, JEAN R. BENNETT, MARVIN W. BLANK, JOHN M. WEIR, ROBERT V. PRESLEY, JOHN H. SASS, R. R. GRAVEN, GRANT T. SHOLD, SAM GHRIST, MARJORIE REAVIS, JOANNA SASS, MARY ELLEN GRANT, HARRY MEEK, VINA ELLIS, FRANK G. BOWMAN, HELEN BOWMAN, DONALD P. SULLIVAN, LUCILLE WRIGHT, EDWARD W. ALLEN, ALMA G. ALLEN, EARL BLANK, RUSSELL Y. LAM, PHYLLIS LAM, L. ROY STACEY, WILLIAM KNOBLAUCK, NORA LEE LAMB, ALLEN L. DENNIS, VERNON WILLIAMS, WALTER STACE, HENRY F. BUNYARD, ORIN CLEMANS, MARY CLEMANS, VERLE WILKINS, CLAUDE WILKINS, P. C. ROGERS, ANNE M. ROGERS, MARIE BLANK, OLIVE L. JONES, LEONARD W. JONES, O. D. PIERCE, LENA PIERCE, JOHN WRIGHT, FLOSSIE M. CARNAHAN, MARGARET CARNAHAN, CRESSA STONE AND CARL A. CARNAHAN, Petitioners

v.

SCHOOL DISTRICT NO. 61, BAKER COUNTY, OREGON.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OREGON

WILLARD K. CAREY
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CARNAHAN, CRESSA STONE AND CARL A. CARNAHAN, *Petitioners*

v.

SCHOOL DISTRICT NO. 61, BAKER COUNTY, OREGON.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OREGON

Petitioners pray for a writ of certiorari to review the judgment of the Supreme Court of Oregon, entered in this case on June 3, 1966.

OPINIONS BELOW

The opinions of the Supreme Court of Oregon (App B, infra, pp. 9-12) is not yet reported. The opinion of the Circuit Court for Baker County, Oregon is unreported (App C, infra, pp. 13-19).

JURISDICTION

The judgment of the Supreme Court of Oregon (App A, infra, pp. 7-8) was entered on June 3, 1966; and a timely petition for rehearing was denied on June 28, 1966. On September 27, 1966, Mr. Justice Douglas extended the time for filing a petition for a writ of cer-

tiorari to November 22, 1966. The jurisdiction of this Court is invoked under the provisions of 28 U. S. Code, Sec 1257 (3).

QUESTIONS PRESENTED

1. Do citizens have a right to rely upon representations made during a campaign by public officials, who are charged with the responsibility of administering the laws of the State of Oregon relative to public education?

2. Is a statute providing for the formation of an administrative school district, unless sixty (60) percent or more of the votes cast are against the formation, against public policy?

STATUTES INVOLVED

The applicable portions of the constitutional provisions are printed in App D, infra, pp. 20.

STATEMENT OF CASE

This case involves a declaratory judgment proceeding brought because of a controversy concerning the formation of an Administrative School District and the acts of such District.

In 1958 the Baker County School Reorganization Committee proposed an Administrative School District which would consolidate several school districts in the

northeastern portion of Baker County, Oregon. The residents of Eagle Valley, the area of one of the school districts, were apprehensive that the proposed district would cause them to lose their high school and that one high school, to serve the entire district, would be built in the more populous Pine Valley.

At a public hearing on the proposed new district, a document was presented which provided, among other things, as follows: "That no school be changed, moved or consolidated without the approval of the patrons in the attendance area which that school serves." The document was signed by the directors and clerks of all the districts proposed to be in the new Administrative District.

The petitioners, as representatives of the residents of Eagle Valley, were advised that the agreement would be incorporated in the school reorganization plan and that they would continue to have their own high school until they approved a change.

About five years after the new Administrative District was formed a majority of the voters of the new district passed a bond issue for one high school for the entire district to be built in Pine Valley. Petitioners sought a declaration through the declaratory judgment proceeding that the Administrative District had no right to move the school without obtaining the consent of the Eagle Valley voters.

The trial court held against the petitioners and the Oregon Supreme Court affirmed the trial court's ruling.

REASONS FOR GRANTING OF WRIT

While this case is important to the petitioners, many of whom are the parents of the high school children who will have to be transported at least twice daily over a steep, crooked and dangerous mountain road, there are yet further aspects of this case which have even greater importance; that is, the right of citizens generally to rely upon the honesty and candor of responsible public officials when speaking on matters relating to the safety, welfare and education of children; and the basic and fundamental right of parents to have a voice in the education of their own children.

If the decision of the Oregon Supreme Court, to the effect "that misrepresentations made during a campaign by public officials will not vitiate an election," is allowed to stand it will totally destroy the faith and confidence of the general citizenry in public officers and officials. It will allow public officials to disregard their duties of loyalty to the public and provide them with an immunity from speaking the truth.

One other feature of this case warrants emphasis among the reasons for granting certiorari. If this Court is to adhere to the fundamental principle of popular government that the legally expressed will of the ma-

jority must prevail in elections, then the election creating the administrative district must be set aside as contrary to this principle.

When the administrative district was originally created in 1959, the vote in the Eagle Valley area resulted in a tie. The statute then in existence, ORS 330.600 (2) (a) (B), defined a "rejecting school district" as a common school district within which sixty (60) percent or more of the votes cast are against the formation of the administrative school district. This section of the laws of Oregon has since been repealed and the newly adopted statute, ORS 330.603, now provides that a rejecting school district is one in which a "majority" of the votes cast are against the formation of the administrative school district.

Since there was no legal provision made in the laws of the State of Oregon to the contrary, an election ending in a tie vote, is a nullity. 29 Corpus Juris Secundum, Elections, Sec 244, pp. 678.

CONCLUSION

For the foregoing reasons it is respectfully submitted that a writ of certiorari should be granted.

Respectfully submitted.

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Attorney for Petitioners

APPENDIX A

BE IT REMEMBERED that at a regular term of the SUPREME COURT of the State of Oregon begun and held at the courtroom in the City of Salem on the first Monday, the 7th day of March, 1966, whereupon on this Friday, the 3rd day of June, 1966, the same being the 39th judicial day of said term, when the following proceedings were had:

KENNETH H. GRANT,
MALCOLM C. BEARDMORE, et al, *Appellants*

v.

SCHOOL DISTRICT NO. 61,
BAKER COUNTY, OREGON, *Respondent*

Appeal from Baker County

This cause on May 3, 1966, at Pendleton, having been duly argued and submitted upon and concerning all questions arising upon the record and then reserved for further consideration, and the court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is not error as alleged.

IT THEREFORE IS CONSIDERED, ORDERED and DECREED that the judgment of the court below rendered and entered in this cause be and the same hereby is in all things affirmed.

Appellants having given an undertaking on appeal with Darlena Hargett and Kathleen Beickel as sureties

conditioned that appellants will pay all damages, costs and disbursements which may be awarded against them on the appeal.

IT THEREFORE IS ORDERED that respondent have and recover of and from appellants and their sureties its costs and disbursements in this court taxed at $186.85.

IT FURTHER IS ORDERED that this cause be remanded to the court below from which the appeal was taken with directions to enter a decree in accordance herewith.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF OREGON

In Banc

KENNETH H. GRANT,
MALCOLM C. BEARDMORE, et al, *Appellants*

v.

SCHOOL DISTRICT NO. 61,
BAKER COUNTY, OREGON, *Respondent.*

Appeal from Circuit Court, Baker County

WILLIAM W. WELLS, Judge

Argued and submitted at Pendleton, May 2, 1966

Willard K. Carey, La Grande, argued the cause for appellants. On the briefs were Burleigh, Carey & Gooding, La Grande.

David C. Silven, Baker, argued the cause for respondent. With him on the brief were Banta, Silven & Young, Baker.

Before McCallister, Chief Justice, and Perry, Sloan, Goodwin, Denecke, Holman and Lusk, Justices.

DENECKE, J.
Affirmed.

DENECKE, J.

This is a declaratory judgment proceeding brought

because of a controversy concerning the formation of an Administrative School District and the acts of such District.

Under the provisions of what is now ORS 330.505 et seq., the Baker County School Reorganization Committee proposed an Administrative School District, in effect consolidating several school districts in the northeastern part of the county. The residents of Eagle Valley, the area of one of the school districts, were apprehensive that the proposed district would cause them to lose their high school and that one high school, to serve the entire district, would be built in the more populous Pine Valley. At a public hearing on the proposed new district, called pursuant to the school reorganization statute, a document was referred to which commenced, "To Whomsoever It May Concern." It was signed by the directors and clerks of all the districts proposed to be in the new Administrative District. It provided, among other things, as follows: "That no school be changed, moved or consolidated without the approval of the patrons in the attendance area which that school serves."

The complaint filed by plaintiffs as representatives of the residents of Eagle Valley alleges that the Eagle Valley residents "were advised that said agreement (the above-quoted statement) would be incorporated in the school district reorganization plan." The "said

agreement" was not in fact incorporated in the school reorganization plan. Plaintiffs further allege that because of their belief that they would continue to have their own high school until they approved a change, they voted in favor of the new Administrative District.

About five years after the new Administrative District was formed, a majority of the voters of the new district passed a bond issue for one high school for the entire district, to be built in Pine Valley.

The plaintiffs sought a declaration that the defendant Administrative District had no right to move the school without obtaining the consent of the Eagle Valley voters.

The trial court held against the plaintiffs and we affirm its ruling.

Art. VIII, Sec. 3, of the Oregon Constitution, vests the state legislature with the responsibility for public education. *Monaghan v School District No. 1,* 211 Or 360, 315 P2d 797 (1957).

The legislature has provided that a bond issue is passed and binding upon the entire district if it is approved by a majority of the voters in the entire district. ORS 328.320.

That legislative command is binding upon the new district. The alleged misadvice to the Eagle Valley voters cannot change or limit that legislative command. See *West Missouri Power Co. v City of Washington,* 80

F2d 420, 422 (10th Cir 1935), and *Anselmi v City of Rock Springs*, 53 Wyo 223, 239, 80 P2d 419, 425, 116 ALR 1250 (1938), holding that misrepresentations made during a campaign by public officials will not vitiate an election.

Affirmed.

APPENDIX C

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR BAKER COUNTY

MALCOLM C. BEARDMORE, et al,
KENNETH H. GRANT,
Plaintiffs,

vs

SCHOOL DISTRICT NO. 61,
BAKER COUNTY, OREGON,
Defendants.

MEMORANDUM OPINION

No. E. 4377

During 1958 the Baker County School Reorganization Committee proposed a plan whereby the common school districts, 44-Richland, 45-New Bridge, 48-Pine and 61-Halfway, would be reorganized as Administrative School District R-2, now known as Pine Eagle School District No. 61. This proposed reorganization plan met with considerable resistance from a number of the citizens living in Eagle Valley due to the apprehension among them that there might be a possibility that the high schools at Richland and Halfway be combined at the latter community once the administrative district had been formed. In order to acquaint the residents with the plan, a number of reorganization committee meetings were held throughout the area prior to the submission of the final plan to the State Board of

Education. In order to gain acceptance of the reorganization plan, some time during this period a document was drafted relative to the consolidation of the Pine and Eagle Valley District containing three resolutions. One of these resolutions stipulated that no school should be changed, moved or consolidated without the approval of the patrons in the attendance area which that school served. The evidence disclosed that these resolutions were discussed generally at official school meetings. The evidence disclosed that the various members of the then existing school boards were induced to agree to such resolutions and individually signed the document. There was conflict in the testimony as to whether the residents of Eagle Valley were clearly advised that these resolutions would not become a formal part of the reorganization plan but would be submitted only as additional material for consideration of the State Board of Education and for the guidance of the future school boards of the reorganized district. It was evident, however, that the resolutions had been thoroughly discussed, and a statement was made by the then Director of School Reorganization of the Oregon State Board of Education that many school boards would consider this type of "gentlemens agreement" more binding than one might believe. As a result of these discussions the impression apparently was left with a number of the Eagle Valley residents that they would have final say over

whether their high school could be changed, moved or consolidated. This reservation, however, was not included as an integral part of the reorganization plan.

The plan was not disapproved by a sufficient number of voters and as a result the new district came into existence. Since that date considerable animosity has developed between the various areas and members of the school board over the need for repairs to the physical plants or the construction of new buildings. On March 24, 1964 a proposal was submitted to the voters for the issuance of bonds which would have built one new high school in Pine Valley. This proposal was defeated. As a result, a lay committee was appointed by the School Board to study the high school problem and to determine which steps should be taken to correct deficiencies which had been pointed out by the Oregon State Fire Marshall which would make possible the continued use of the buildings. After some investigation this committee discontinued further attempts to promote two new high schools or to remodel the two existing plants.

Subsequently there were presented to the school board on June 24, 1964, within a few hours of each other, two so-called "mandatory petitions" under the provisions of ORS 328.210. The first of these asked for submission to the voters of a proposal to issue bonds in the amount of $650,000.00 to build one high school

in Richland to serve the entire district; the second petition asked for an election for the issuance of bonds in the amount of $585,000.00 to build one high school in Halfway to serve the district. An election was held on the first proposal on July 29, 1964 and was defeated by a large majority. An election was held on the second petition on August 24, 1964 and passed by an over-all vote of 541 to 463. A third mandatory petition has been filed with the school board requesting an election for a bond issue of $550,000.00 to build a high school facility adjacent to the existing Halfway elementary school and another high school facility adjacent to the elementary Richland school. The school board has, however, not set an election date in view of the previous successful vote for the one high school to be located at Halfway.

Plaintiffs have now instituted this suit seeking a declaratory judgment that the defendant School Board does not have the right to change, move or consolidate the Eagle Valley and Richland high schools without first obtaining the approval of the patrons in the attendance area which said schools serve.

Article VIII, Sec 3 of the Constitution of the State of Oregon vests the Legislature with responsibility for public education in the State of Oregon as follows:

> "The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools."

Education, therefore, is a local matter only insofar as the Legislature may prescribe.

"Education is a function or duty not regarded as a local matter. It is a governmental obligation of the state. Few of our administrative agencies are creatures of the organic law. But, as to schools, the constitution mandates the legislature to provide by law 'for the establishment of a uniform, and general system of Common schools.' " Oregon Constitution, Art VIII, Sec 3; 47 Am Jur 299, Schools Sec 6. It is a sovereign power and cannot be bartered away. *Campbell v Aldrich,* 159 Or 208, 219, 79 P2d 257. The power ascribed to the legislature under the constitution carries with it plenary power to establish the unit of the system, denominated a school district. *Harris v Burr,* 32 Or 348, 367, 52 P 17.

A school district, as a legislatively created entity, enjoys closer proximation to the state than to the community it serves. It is a civil division of the state and has been referred to as a corporation having the most limited powers known to the law. It is a quasi-municipal corporation separate and distinct from pure municipal corporations such as cities and towns. *Lovell v School District No. 13, Coos County,* 172 Or 500, 507, 143 P2d 236; *Antin v Union High School District No. 2 of Clatsop County,* 130 Or 461, 464, 280 P 664; *School District No. 17 of Sherman County v Powell,* 203 Or 168, 185, 279 P2d 492; 47 Am Jur 305, Schools Sec 12.

When it so acts, it acts wholly as a governmental agency when performing duties imposed by statute. *Spencer v School District No. 1,* 121 Or 511, 518, 254 P 357; *Antin v Union High School, supra* (130 Or 470); 66 ALR 1271." *Monaghan v School District No. 1,* 211 Or 360, 373.

In view of this pronouncement by the Supreme Court, it appears that it would not have been material whether the resolutions had been included as a part of the formal plan or not as the procedures for establishment and financing of schools has been prescribed by the Legislature. The third resolution was an attempt to subvert the provisions of ORS 331.130 which provided that school board bond elections shall be submitted to *all* of the legal voters of the school district. The proposed resolutions attempted to create a subdistrict and sought to restrict the decision to the unanimous consent of the several subdistricts. There is no legal justification for such fragmentation of the election procedure. Had School District No. 61 attempted to authorize the voters of Eagle Valley to exercise veto power over the vote of the entire school district, it would have been an improper delegation of power, and would have been in direct contravention of the statutes regulating school administration established by the Oregon State Legislature.

The Constitution of Oregon and enactments of the legislature must take priority over the plan of any school reorganization committee. By legislative fiat, upon the petition of 10% or at least 100 persons, whichever is the lesser number, the legal voters of a school district are given the authority to require the school board to call such an election as was done in the instant

case.

It is thus apparent that this Court is without authority to negate the procedures for the administration of public education established by the legislature of the State of Oregon by granting the relief prayed for in the plaintiffs' amended complaint. It must, therefore, be refused.

DATED at Pendleton, Oregon, this 28th day of April, 1965.

WILLIAM W. WELLS,
Circuit Judge.

APPENDIX D

The Ninth Amendment to the Constitution of the United States provides as follows:

> "Rights retained by people. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

> "Section 1. Citizenship; privileges and immunities; due process; equal protection. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article VIII, Section 3 of the Constitution of the State of Oregon provides as follows:

> "Section 3. System of common schools. The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of common schools."

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Petitioners

v.

SCHOOL DISTRICT NO. 61, BAKER COUNTY, Oregon,

Respondent

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

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Petitioners

v.

SCHOOL DISTRICT NO. 61, BAKER COUNTY, Oregon,

Respondent

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

JURISDICTION

I.

No federal question was raised either in the trial court or state appellate court.

II.

No federal question was in fact determined.

III.

The validity of any state statute was not drawn in question on the ground of its being repugnant to the Constitution of the United States, nor is there any right, title, privilege or immunity specially set up or claimed under such Constitution.

STATEMENT OF THE CASE

The case was soley for a declaratory judgment that the defendant did not have the right to change, move or consolidate a school without first obtaining the approval of the patrons in the attendance area which said school serves.

The document presented at the public hearing on the proposed reorganization of school district was not a promise but merely a recommendation for consideration of the new board to be formed, that no school be changed, without the approval of the patrons. (Amended Complaint Paragraph IV).

It was a disputed and contested question of fact, whether the electors were misled.

Neither the constitutionality of the state statutes nor any other federal question, was ever raised in any of the proceedings.

ARGUMENT

Oregon Constitution, Art. VIII, §3, provides:

> "The Legislative Assembly shall provide by law for the establishment of a uniform and general system of common schools".

Education is a governmental obligation of the state and the power ascribed to the Legislature under this constitutional provision empowers the Legislature to establish school districts.

> Monaghan vs. School District No. 1, 211 Or. 360, 373, 315 P2d 797, 804

The Legislature, pursuant to that authority, authorized reorganization and consolidation of school districts. ORS Ch. 330. School Districts may be abolished or dissolved at the will of the Legislature. Attorney General, ex rel, Kiest, vs. Lowrey, 199 U. S. 233, 26 Sup. Ct. 27; 47 Am. Jur. 310 Schools §§ 17, 18.

One of the discretionary powers of the school board

in Oregon is the location of schools. ORS. 332.155 states:

> "A district school board may: (1) Furnish *** and build schoolhouses *** and locate, buy and lease lands for all school purposes ***, (3) lease, sell and convey such district land and other property as may not in their judgment be required for school purposes."

This discretionary power as to location of schools will not be interfered with by the court. Padberg, et al, vs. Martin, et al, 225 Or 135, 141, 357 P2d 255, 258.

Therefore not only was no federal question raised, discussed nor determined, it is obvious that this is purely a state and local matter, and the petition for the writ should be denied.

The opinion of the Oregon Supreme Court (Petition, App. B, Page 12) that "misrepresentations made during a campaign by public officials will not vitiate an election" must be read with the court citations in mind. The only reported misrepresentation in West Missouri Power Co., vs. City of Washington, 80 Fed. 2d 420 (10th Circuit 1935) was the use of the word "appurtenances" in a bond issue for power purposes and failure to inform the public that this included "generators". Misrepresentation could hardly be charged on the basis of questionable choice of words.

Anselmi v. City of Rock Springs, 53 Wyo. 223, 239, 80 P2d 419, 425, in stating that misrepresentations will not vitiate the election, nevertheless recognized as seen by page 423 that if the electors were actually misled the court would have declared the bonds invalid. Thus the Oregon Court was not adopting an absolute rule of law that misrepresentations during the campaign were ineffective. It was aware that if the voters were actually misled, the election could be set aside. Being thus aware and still upholding the election in the instant case, amounts to a judicial determination and finding that the voters in fact were not misled, which fact is confirmed by the transcript of record.

CONCLUSION

The respondent opposes review of any matter contained in the petition as no federal question nor constitutional issue was raised, involved or determined in the trial court nor state appelate court.

Respectfully submitted,

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